

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

FILED
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PER

DEPUTY CLERK

ELWOOD SMALL, et al.,
Plaintiffs

v.

JOHN WETZEL, et al.,
Defendants

CIVIL NO. 3:11-CV-1819

(JUDGE NEALON)

(MAGISTRATE JUDGE MANNION)

MEMORANDUM

On October 3, 2011, Plaintiffs, Elwood Small and Pearlie DuBose, Jr., who were both incarcerated at the State Correctional Institute at Laurel Highlands in Somerset, Pennsylvania ("SCI- Laurel Highlands")¹, filed the instant civil rights action pursuant to 42 U.S.C. § 1983. (Doc. 1). Defendants are employees at SCI-Laurel Highlands or of the Pennsylvania Department of Corrections ("DOC"). (Id.). Plaintiffs complain about an unconstitutional strip search performed on October 5, 2009 at SCI- Laurel Highlands and about the DOC's Ramadan Policy. (Id.). On December 20, 2011, Defendants filed a motion to dismiss the complaint, or in the alternative, motion for transfer of venue. (Doc. 10). On February 13, 2012, Defendant Conti filed an unopposed motion to stay proceedings until he returns from active duty military deployment. (Doc. 16). On February 28, 2012, the parties filed a joint stipulation agreeing that venue is more appropriate in the United States District Court for the Western District of Pennsylvania and that this action should be transferred to that Court. (Doc. 20).

On March 27, 2012, Magistrate Judge Malachy E. Mannion issued a Report and Recommendation ("R&R") recommending that the motion to dismiss the complaint or, in the


¹SCI- Laurel Highlands is located in the Western District of Pennsylvania.

alternative, for a change of venue be granted only to the extent that the action should be transferred to the United States District Court for the Western District of Pennsylvania. (Doc. 22). Additionally, the Magistrate Judge recommends that the unopposed motion to stay proceedings pursuant to the Service Members Civil relief Act, 50 U.S.C. §§ 522, 525, be dismissed without prejudice to re-filing in the United States District Court for the Western District of Pennsylvania. (Id.). No objections have been filed to the R&R and it will be adopted.

When neither party objects to a magistrate judge's report and recommendation, the district court is not statutorily required to review the report under de novo or any other standard. Thomas v. Arn, 474 U.S. 140, 152 (1985); 28 U.S.C. § 636(b)(1)(C). In the absence of objections, review may properly be limited to ascertaining whether there is clear error that not only affects the rights of the plaintiff, but also seriously affects the integrity, fairness, or public reputation of judicial proceedings. Cruz v. Chater, 990 F. Supp. 375, 377 (M.D. Pa. 1998) (Vanaskie, J.). The district court may accept, reject, or modify, in whole or in part, the findings and recommendations contained in the report. 28 U.S.C. § 636(b)(1)(C); Local Rule 72.3.

In the absence of objections and upon consideration of the joint stipulation that this matter be transferred to the United States District Court for the Western District of Pennsylvania, Magistrate Judge Mannion's R&R will be adopted. See also 28 U.S.C. § 1404(a).

A separate Order will be issued.


United States District Judge

Date: April 20, 2012